

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JULIANNE PANAGACOS, et al.,

Plaintiffs,

v.

JOHN J. TOWERY, et al.,
Defendants.

NO. 3:10-cv-5018 RBL

DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
EXTENSION OF TIME TO RESPOND
TO SUMMARY JUDGMENT
MOTIONS

Noted for: April 18, 2014

Plaintiffs seek an additional thirty days to respond to the pending motions for summary judgment, arguing that the materials filed in support of the defendants' motions are voluminous and that because this case involves "novel issues of first impression," counsel needs to do extensive research and careful analysis of all of these issues¹. While the defendants acknowledge that response to the pending motions will require a great deal of work, this is work that plaintiffs could and should have anticipated.

¹ The defendants note that plaintiffs are not seeking a continuance of the summary judgment motions pursuant to Fed. R. Civ. Pro. 56(d), nor have they made the necessary showing to do so.

1 This case has been pending since early 2010. The defendants have
2 never made a secret of the fact that they intended to bring dispositive motions
3 on all claims asserted herein and plaintiffs have had four years to complete the
4 "extensive research" they deem necessary to support their "novel issues."
5 Moreover, plaintiffs themselves defined these issues and the claims brought
6 herein, and therefore, should have been conducting the research necessary to
7 confirm that their claims are warranted by existing law or by a nonfrivolous
8 argument for the extension, modification or reversal of existing law throughout
9 this litigation. Given the extensive experience of plaintiffs' attorneys, the
10 defendants anticipate that plaintiffs' attorneys have been meeting their
11 obligation in this regard and that a great deal of new research should not be
12 required at this time.
13

14 Moreover, the claims asserted herein do not involve particularly complex
15 or novel issues of law. To the contrary, the bulk of the claims asserted herein
16 are asserted against the Olympia defendants and involve routine claims of
17 excessive force, false arrest and sundry state tort actions. The law governing
18 such claims is fully developed and there is no reason plaintiffs could not be
19 prepared to address the merits of these claims. Plaintiffs' claims against
20 Towery and Rudd are confined to the First and Fourth Amendments, and these
21 claims are "novel issues of first impression" only to the extent plaintiffs attempt
22 to overcome well-established doctrines that foreclose their claims, such as the
23 invited informer doctrine and this Court's ruling in *McCarthy* that there is no
24 Constitutional violation in joining a listserv under an assumed name. Plaintiffs
25

1 have had ample time to conduct whatever research they wish because the facts
2 on which their claims are based—joining listservs, attending meetings and
3 social events, and sharing information—have long been known to plaintiffs and,
4 in fact, were included in the initial complaint filed years ago. Because plaintiffs
5 have had years to develop their legal theories and the full discovery period to
6 develop their evidence, the issues are now ripe for resolution on summary
7 judgment.

8 Plaintiffs in this action are represented by four attorneys and collectively,
9 these attorneys have decades of experience. Every attorney, including all of
10 the defense attorneys, has other cases, other deadlines, other trials. This is a
11 normal condition in a litigation practice and it is incumbent on counsel to
12 manage the multiple, and sometimes conflicting, deadlines. The Court has
13 previously accommodated plaintiffs' difficulties in meeting the case schedule
14 deadlines herein, and the result is that the motions for summary judgment butt
15 up against the trial date and trial preparation. Further, the Court has already
16 scheduled oral argument for summary judgment on these motions for May 22,
17 2014, just one day after the extended deadline plaintiffs' seek for their
18 responses.
19

20 Plaintiffs have not demonstrated the good cause required by LCR
21 16(b)(4) for the extension they seek. Moreover, contrary to plaintiffs' assertion,
22 continuance of the briefing schedule on summary judgment does prejudice the
23 defendants in that it would necessarily require a continuance of the trial date,
24 which would largely negate the trial preparation that has to be completed before
25

1 that time. The defendants have been diligent in moving this case forward and
2 seek a timely consideration of their pending motions.

3 For these reasons, plaintiffs' motion for a continuance of the briefing
4 schedule on summary judgment should be denied and plaintiffs' responsive
5 materials on the pending motions should be filed, in accordance with the court
6 rules, by April 21, 2014.

7 DATED this 16th day of April, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on 4-16-14, I electronically
filed, through my staff, the foregoing with the Clerk of the Court using the
CM/ECF system which will send notification of such filing to the attorneys on
record.



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